

DISABILITY LAW PROJECT

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November 13, 2003

Joan Senecal, Operational Director
Division of Advocacy & Independent Living
Department of Aging and Disabilities
South Main Street
Waterbury VT 05676

Re: Draft Proposal, "The Vermont Long Term Care Plan"

Dear Ms. Senecal:

Thank you for providing the Disability Law Project with an opportunity to comment on the Department's draft Section 1115(a) Research and Demonstration waiver proposal. I have identified some areas of concern and would appreciate your consideration of these comments.

Eligibility Criteria

The Disability Law Project is very concerned that this waiver is not available to Vermonters with diagnoses of mental illness or brain injury. It's ironic that a waiver proposal that is designed "to expand home and community based services to the frail elderly and disabled adults" and to "test the hypothesis that targeted early intervention, assessment and case management... will reduce utilization of institutional settings" and to help Vermonters to "live as independently as possible for as long as possible" would specifically exclude certain individuals based upon their disability. This waiver proposal clearly contemplates providing services to elderly individuals with dementia but not to Vermonters with similar medical needs who happen to have different diagnoses.

Individuals with mental illness or a developmental disability can access services through the Department of Developmental and Mental Health Services and this Department also has a Traumatic Brain Injury Waiver that is working well. To a large extent, the 1115 proposal incorporates the populations served by our current 1915(c) Waivers and by nursing homes. This demonstration waiver proposes a major change in Vermont's long-term care system. The Department wants to ensure that the program is done well. There are a myriad of details to work through and many twists and turns along the way. It seems prudent to keep the demonstration to a workable size by including only nursing homes and the two home-and community-based waivers.

We are also concerned that the Department has tightened the eligibility criteria for entitlement to long term care services for those with the highest need. We are concerned about the approximately 200-300 current beneficiaries who will lose their waiver services due to this change. Presumably, these individuals will fit into the “High Needs” and “Moderate Needs” groups. However, there is no entitlement to waiver services for these groups. Does the Department have a good handle on who these individuals are? What provisions been made to ensure that these frail elderly and disabled adults will receive the services they need to prevent institutionalization?

We agree that we have “tightened” the clinical eligibility criteria for the Highest Need group; however, we have increased the entitlement to those services. As you know, under the current system, if an individual meets the clinical and financial eligibility criteria for care in a nursing home, beds are available and Medicaid will pay. However, if that same individual prefers to receive long-term care services at home, he/she must wait until a waiver slot becomes available in that part of the state. The demonstration program will create an entitlement group whose members may then choose where they want to receive their services – home-and community-based or in a nursing facility.

DA&D is also asking CMS for permission to “grandfather” in all individuals who are currently residing in nursing homes (with Medicaid as the source of payment) and everyone currently on the Home-Based and ERC waivers. We are confident that we will be able to serve more people over time, based on our assumption that more individuals will choose care outside a nursing facility. As that occurs, funds will be allocated to serve more individuals in the High Need and Moderate Need groups. In addition, individuals who are eligible for Medicaid State Plan services and home-and community-based services will still have access to those services and programs.

Referral Intake and Preliminary Assessment Process

In order to decrease utilization of nursing facility services as well as to limit disruption to patients, all Medicaid eligible persons should be assessed prior to discharge from the hospital. Hospital staff need to do a better job of identifying these individuals early on and providing them with information on long term care services in a timely manner to prevent unnecessary institutionalization.

We are not sure what is meant by “limit disruption to patients”; however we agree that discussing options with individuals early on makes a great deal of sense. We welcome discussions with the hospitals about how this might be accomplished without disruptions in the discharge planning process.

Assistive Devices and Home Modifications

The \$750.00 cap is too low. Assistive devices and home modifications are vitally important in delaying or preventing institutionalization. Many of the devices people rely on are not covered

under the DME benefit. Likewise, home modifications are not State Plan services. The Center for Medicaid and Medicare Services recognizes that the purchase of medical equipment can create a hardship for long term care recipients and encourages states to provide adaptive aids under their section 1915 and 1115 waiver programs. (Dear State Medicaid Director Letter, dated July 14, 2003) Some beneficiaries will require more equipment and home modifications than \$750.00 will cover, particularly if ramps or bathroom modifications are needed. It is important to remember that many of these purchases will be one time expenditures and will, ultimately, result in savings by preventing nursing facility placements.

We are aware of this concern and will continue to discuss the idea of increasing the cap, while at the same time ensuring that we meet the requirement to maintain budget neutrality.

Increased Funding of the Department of Aging and Disabilities

It would appear that a serious increase in funding is necessary in order to meet the objectives of this waiver proposal. The loss of 200-300 waiver slots due to the proposed change in eligibility criteria along with the elimination of 50 slots last year, will undoubtedly have an impact on the system. Without an increase in funding up front to restore waiver slots, grow the PDAC program and otherwise augment the capacity of Vermont's long-term care infrastructure, the demonstration projects' overriding goal of expanding choices for consumers and eliminating the inherent bias in the Medicaid program for institutional care will not be met.

By combining the nursing home Medicaid funds and those dedicated to the two home- and community-based waivers, DA&D will be overseeing a substantial budget for this 1115 demonstration program. We will not be losing 200-300 Waiver slots. When the program opens, we will be serving all those presently in nursing homes (with Medicaid funding) and on our two waivers. There will no longer be "slots". If an individual is found to be eligible for the Highest Need group, she/he is entitled to services and will receive them. We also feel confident that we will have funds to serve everyone who comes to the High Need group. We are confident that we will be able to serve more people over time, based on our assumption that more individuals will choose care outside a nursing facility, which will allow us to invest those funds in serving more individual in home- and community-based settings. As that occurs, funds will be allocated to serve more individuals in the High Need and Moderate Need groups.

Regulations

State and federal law requires that the Department promulgate waiver regulations pursuant to the Vermont Administrative Procedures Act. The Department must commit to do so in this waiver proposal.

We agree. The first meeting for this workgroup is scheduled for November 18, 1 –4 p.m. in the Cyprian Learning Center, Waterbury Office Complex.

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September 19, 2003
Joan Senecal, Operational Director

Thank you for your consideration of these comments. I have reviewed the comments of Jackie Majoros, The State Long Term Care Ombudsman; and Donna Sutton Fay, the State Health Care Ombudsman, and support the comments they are forwarding.

I would appreciate it if you would add my name to the list of interested parties to whom information regarding this waiver proposal is sent.

Sincerely,

Jane Callahan
Disability Law Project